

Remarks

Please enter the amendments and three claims presented above into the record.

Applicants have elected to cancel the current claims and submit three new claims limited to a single compound, its use and a pharmaceutically acceptable formulation. Applicants reserve the right to file a continuation application to the subject matter not claimed. Cancellation of claims 1 - 16 is being done to move forward on obtaining a patent on a compound of interest in order to avoid possible loss of patent term restoration by virtue of a delay in issuance of a patent on such a compound, not because applicants concede the merits of the examiner's arguments on the patentability of the canceled claims.

New claim 17 recites the compound named in the ultimate line on page 43, i.e.

Example 43. It differs from the WO '358 application by virtue of the heteroaryl group 1,2,4-oxadiazol-3-yl on the biphenyl group [ $R^a$  is a group of formula (ii)], a group -NH-, -NR<sup>5</sup>, CH<sub>2</sub> or -O- between the C=V group and the  $R^a$  formula (ii) group, and two 3,5-dimethyl groups on the piperazin-1-yl ring. The '358 case does not list a heteroaryl group on either of the "P" rings of  $R^a$ /formula (ii). That combined with the change in the "Y" group in this case, and the 3,5-dimethyl groups on the piperazine ring add up to a unique compound that is not obvious over the '358 disclosure. Incidentally, the US application corresponding to the WO '358 case has been abandoned.

The compound of new claim 17 differs from the generic disclosure in WO '637 citation and the claims of US patent 5,969,122 by virtue of the 3,5-dimethylpiperazin-1-yl group.

The indole of claim 17 differs from the generic WO '885 disclosure and the claims of US patent 6,159,979 in that those compounds have a group -NH-, -NR<sup>5</sup>, CH<sub>2</sub> or -O- between the C=V group and the  $R^a$ /formula (ii) group, while in these compounds the  $R^a$ /formula (ii) is bonded directly to the carbonyl carbon on the indole nitrogen. This compound also has the two 3,5-dimethylpiperazin-1-yl construct.

Claim 19 is limited to a method of treating depression, as supported by the specification at page 7, lines 17-36 and Claster (Annual Reports in Medicinal Chemistry - 33; Academic Press, Robertson Ed.; 1998, pp 21-30).

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Conclusion

Please enter the foregoing amendments into the record, including the new claims, and all the three new claims.

Respectfully submitted,



James M. Kanagy  
Attorney for Applicants  
Registration No. 29,550

GLAXOSMITHKLINE  
Corporate Intellectual Property - UW2220  
P.O. Box 1539  
King of Prussia, PA 19406-0939  
Phone (610) 270-5014  
Facsimile (610) 270-5090  
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